3997

SUPREME COURT OF THE UNITED STATES.

No. 119.

JOHN DOE EX DEM. AUSTIN MILLER, PLAINTIFF IN ERROR,

vs.

WASHINGTON AND SANDERS TAYLOR.

IN ERROR TO THE DISTRICT COURT, UNITED STATES, FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

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[GIDEON, Print.]

Exemplification.

DOE ex demise of Austin Miller
vs.
S. & W. TAYLOR.

Pleas had at a district court of the United States, for the northern district of Mississippi, begun and held in the town of Pontotoc, in said district, on the first Monday of December, A. D. 1847.

Present, the honorable Samuel J. Gholson, judge of said court.

Be it remembered, that, on the 8th day of October, A. D. 1847, John Doe, a citizen of the State of Tennessee, filed in the office of the clerk of the district court of the United States, for said district, his certain declaration in ejectment in the words and figures following, to wit:

UNITED STATES OF AMERICA,
The State of Mississippi.

District court of the United States, for the northern district of the State of Mississippi, December term, 1847.

John Doe, who is a citizen of the State of Tennessee, by attorney complains of Richard Roe, who is a citizen of the State of Mississippi, resident in said northern district, of a plea of trespass and ejectment, &c.

That whereas Austin Miller, a citizen of the State of Tennessee, on the 1st day of July, in the year 1846, had demised a certain farm, containing six hundred and twenty acres of land, the same being section 27, in township one, of [range] three west of the basis meridian, (except 25 acres in the southwest corner of said section,) situated in the county of Marshall, and State of Mississippi, in the district aforesaid, with the houses, fields, rights, members, and appurtenances thereunto belonging, or in any wise appertaining, to the said John Doe: to have and to hold the same to the said John Doe and his assigns, from the 1st July, 1846, for and during, and unto the full end and term of twenty years from thence next ensuing and fully to be complete and ended; by virtue of which said demise the said John Doe entered into said tenements, with the appurtenances, and became and was thereof possessed for the term so to him thereof granted as aforesaid; and the said John Doe being so thereof possessed, the said Richard Roe afterwards, to wit, on the first day of August, 1846, in the district aforesaid, with force and arms, &c., entered into the said tenements, with the appurtenances, in which the said John Doe was interested in manner and for the term aforesaid, which is not yet expired, and ejected him, the said John Doe, out of his said farm, and other wrongs to the said John Doe then and there did, to the great damage of the said John Doe, and

against the peace and dignity of the United States. Wherefore the said John Doe saith he is injured and has sustained damage to the value of three thousand dollars; and therefore he brings suit, &c.

BRADFORD, *for Plaintiff*.

Mr. Saunders Taylor and Mr. Washington Taylor, citizens of the State of Mississippi, residing in said northern district.

GENTLEMEN: I am informed that you are in possession or claim title to the premises in this declaration of ejectment mentioned, or to some part thereof; and I being sued in this action as casual ejector only, and having no title or claim to the same, do advise you to appear in the district federal court, for the northern district of the State of Mississippi, to be holden at Pontotoc on the first Monday of December, 1847, by some attorney of said court, and then and there, by rule of the same court, to cause yourself to be made defendant in my stead; otherwise I shall suffer judgment therein to be entered against me, and you will be turned out of possession. Dated this 8th day of October, 1847.

Yours, RICHARD ROE.

Endorsement on said declarations: Came to hand 11th October, 1847; executed on Sanders Taylor and Washington Taylor, by leaving with each a true copy of the within the 1st day of November, 1847.

A. H. KINCANNON, *Marshal*.
By E. W. ROOTES, *Deputy Marshal*.

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At the December term, 1847, the following proceedings were had in said cause, to wit:

Saturday, December 11th, 1847.

JNO. DOE on demise of Austin Miller
vs. } 647.
RICHARD ROE.

This day came the parties by their attorneys, and thereupon, by consent of the parties, it is ordered that the following consent rule be entered in this cause, to wit:

THE UNITED STATES OF AMERICA,
Northern district of Mississippi, district court.

December term, 1847.

John Doe ex demise of Austin Miller vs. (481) Richard Roe, Saunders Taylor, and Washington Taylor, on their motion are admitted de-

fendants in this suit, in the room of the said Roe; and thereupon, by their attorney, come and defend the force and injury when, &c., plead the general issue, and confess the lease, entry, and ouster in the declarations supposed, and agree to insist at the trial only upon the title. Watson, Clapp & Barton for dfts., Bradford & Word for plffs. Whereupon this cause is continued.

Defendant's plea.

THE UNITED STATES OF AMERICA,
Northern district of Mississippi, district court.

December term, 1847.

JOHN DOE ex dem. Austin Miller
vs.
Saunders Taylor and Washington Taylor.

And the said defendants, by attorney, come and defend the wrong and injury, when, &c., and say that they are not guilty of the said supposed trespass and ejectment, or any or either of them, in manner and form as the said plaintiff hath above thereof in his said declaration complained; and this they pray may be inquired of by the country, &c.

BARTON, WATSON, & CLAPP,
Attorneys for defendants.

And the said plaintiff, by attorney, doth the like.

BRADFORD & WORD,
Attorneys for plaintiff.

Agreement between attorneys.

It is agreed that the said defendants, or either of them, may have the benefit of any plea at the next term, which may be available to them, or either of them, the same to be filed so as not to delay the trial. 11th Dec'r, 1847.

BARTON, WATSON, & CLAPP,
Attorney for defendants.
BRADFORD & WORD,
Attorneys for plaintiff.

Proceedings had in said cause at the June term, 1848, are in the words and figures following, to wit:

Thursday, June 8th, 1848.

DOE ex demise of Austin Miller
vs.
SANDERS and Washington Taylor. } 647.

This day came the parties, and by consent continued this cause.

The following proceedings were had in said cause at the December term, 1848, to wit:

Thursday, December 7th, 1848.

Doe on demise of Austin Miller
vs.
Sanders and Washington Taylor. } 647.

This day came the parties, by their attorneys; and thereupon, for sufficient cause shown by plaintiff, it is ordered that this cause be continued, and that defendants recover of plaintiffs the costs of this cause at the present term of this court.

At the June term, A. D. 1849, there were no proceedings had in this cause.

The following proceedings were had in said cause at the December term, A. D. 1849, to wit:

Wednesday, December 5th, 1849.

Doe on demise of Austin Miller
vs.
Sanders Taylor and Washington Taylor. } 647.

This day came the parties by their attorneys; and thereupon came a jury of good and lawful men, to wit, jury No. 1, being James Crayton and eleven others, who being tried, sworn, and empannelled, well and truly to try the issue joined, who, upon their oaths do say, that they find the defendants guilty of the trespass and ejectment in plaintiff's declaration alleged, and assess plaintiff's damages, by reasons thereof to the sum of one dollar. It is therefore considered by the court that plaintiff recover of defendants his term to come, and possessions of the premises in plaintiff's declarations mentioned, and also the damages aforesaid by the jury assessed, together with the costs in this behalf expended; and that a writ of possession and execution do issue accordingly.

On the 11th day of December, A. D. 1849, being a day of the December term of said court, the following proceedings were had in said cause, to wit:

Tuesday, December 11th, A. D. 1849.

Doe ex dem. of Austin Miller
vs.
S. & W. Taylor. }

On motion of defendants, an appeal is allowed them to the next term of the Supreme Court of the United States, to be holden at Washington city on the first Monday of December, A. D. 1850, on their giving bond in the penalty of $500, conditioned as the law directs, with Jas. W. C. Watson and George R. Freeman as securities.

Defendant's bill of exceptions.

Be it remembered, that on the trial of this case it was proved and

admitted by both parties that one William Crane was seized and possessed of the land in controversy, and that both plaintiff and defendants claimed, through and under the said Crane, the title upon which they respectively relied in this suit. That the said Crane, being so seized and possessed of said land, conveyed the same in trust, on 21st September, 1840, to one Pitser Miller, for securing a debt in said trust mentioned; which said deed of trust, after being duly proved, was delivered to the probate clerk of Marshall county, State of Mississippi, the county in which said was situated, for record, on the 7th December, 1840, and was then duly recorded. That thereafter said land was duly advertised for sale, under said trust, and was regularly sold, in pursuance thereof, by said Pitser Miller, on the 20th day [of] April, 1843, when the plaintiff became the purchaser of it, at the price of $1,000; and thereupon the said land was conveyed to the plaintiff by the said Pitser Miller, by deed duly acknowledged and recorded in the probate court of Marshall county, on the said 20th of April, 1843.

That the defendants were in the possession of said land at the time of the bringing of this suit, and that the said land was worth about the sum of $4,000 00.

The defendants now proved that, on the 17th of November, 1840, a judgment was recovered in the circuit court of the said county of Marshall against the said William Crane for the sum of six thousand [dollars]; that on the said judgment a writ of fi. fa. issued against the goods and chattels, lands and tenements, of the said William Crane, returnable to the 1st Monday in June, 1841; which fi. fa., on the same day issued, came into the hands of the sheriff of Marshall county, and by him was levied on the land in controversy on the 16th of April, 1841; and thereupon the said Crain claimed the benefit of the valuation law of Mississippi; and the said land, in pursuance of the provisions of said law, was valued at the sum of six thousand dollars; and being then offered for sale, after having been first duly advertised, and two-thirds of the appraised value not having been bid for the said land, the said fi. fa., and papers connected therewith, were duly returned to the clerk's office of the said circuit court of Marshall county, in compliance with law; and thereafter, and after the expiration of twelve months, to wit, on the 30th day of May, 1842, a writ of venditioni exponas, tested first Monday in March, 1842, was issued by the clerk of the said circuit court of Marshall county, directed to the sheriff of said county, commanding him to sell the said land which had been levied on, and on which the stay had been taken, as herein before set out; by virtue of which said vendi. the said sheriff, after duly advertising said land, sold the same on the 17th day of August, 1842, when the defendants became the purchasers thereof, at the price of eight hundred dollars; which purchase money being duly paid, the said sheriff conveyed said land to said defendants, by deed in due form of law; which said deed was duly acknowledged and recorded in the probate clerk's office of the said county of Marshall, on the said 17th

day of August, 1842; under which said purchase and deed the defendants claim, and were in possession of said land at the institution of this suit.

The plaintiff now proved that the said William Crain, the defendant in the vendi., departed this life on the 20th day of February, 1842, during the 12 months stay aforesaid, and before the issuance or test of the said vendi., under which said land was sold when the defendants purchased it.

On the foregoing facts which were established by legal testimony, the court charged the jury, that if they believed, from the evidence in the case, that the venditioni exponas, by virtue of which the land in controversy was sold, and under which the defendants became purchasers thereof, was issued and tested after the death of the said William Craine, and without a revisal of the judgment by scire facias, then such sale and purchase were void, and conferred no title on defendants.

To which charge of the court, when given, the defendants, by their counsel, excepted; and, to save the benefit of said exceptions, tendered this their bill of exceptions, and prayed that the same might be signed and sealed by the court, and be made a part of the record in this case, which is done accordingly.

S. J. GHOLSON. [SEAL.]

The following proceedings were had in said cause on the 12th day of December, 1849.

Wednesday, December 12, 1849.

DOE on dem. of AUSTIN MILLER
vs.
S. & W. TAYLOR.

The defendants presented an appeal bond in this case, which was approved in open court, and ordered to be filed.

Appeal bond.

Know all men by these presents, that we, Washington Taylor, and Sanders Taylor, and John W. C. Watson, and George R. Freeman, are held and firmly bound unto Austin Miller in the sum of five hundred dollars, to be paid to the said Austin Miller, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, [and] administrators, firmly by these presents; sealed with our seals, and dated this 12th day of December, 1849.

Whereas the above named Washington and Sanders Taylor have prayed and obtained an appeal to the Supreme Court of the United States, to reverse the judgment rendered during the present term of district court of United States for the northern district of Mississippi, held at Pontotoc, in the case of John Doe, on the demise of the above named Austin Miller, against the said Washington and Sanders Taylor, for the

possession of a certain tract of land in said suit mentioned and described.

Now, therefore, the conditions of the said obligations above written *is* such that, if the above named Washington Taylor and Sanders Taylor, shall prosecute the said appeal with effect, and answer all costs, if he shall fail therein, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

WASHINGTON TAYLOR, [SEAL.]
By JNO. W. C. WATSON,
His attorney in fact.
SANDERS TAYLOR, [SEAL.]
By JNO. W. C. WATSON,
His attorney in fact.
JNO. W. C. WATSON, [SEAL.]
GEORGE R. FREEMAN. [SEAL.]

UNITED STATES OF AMERICA,
Northern district of Mississippi.

I, Robert W. Edmondson, clerk of the district court of the United States for said district, certify, that the foregoing eight pages contain a true and correct transcript of the original papers and proceedings filed and had in the cause therein stated, as fully and completely as the same remain of record and on file in my office.

In testimony whereof I have hereunto set my hand, and affixed the [SEAL.] seal of said court at office in Pontotoc, this 19th day of November, A. D. 1850.

R. W. EDMONDSON, *Clerk.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the judge of the district court of the United States, for the northern district of Mississippi, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you, between John Doe ex demise of Austin Miller, plaintiff, and Washington Taylor and Sanders Taylor, defendants, a manifest error hath happened, to the great damage of the said John Doe ex demise of Austin Miller, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ; so that you have the same at Washington on the first Monday of December next, in the Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause